

STATE OF MICHIGAN
COURT OF APPEALS

KASSEM ABBAS,

Petitioner-Appellee,

v

CITY OF DEARBORN,

Respondent-Appellant.

UNPUBLISHED
December 27, 2012

No. 307084
Tax Tribunal
LC No. 00-368677

Before: WHITBECK, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Respondent City of Dearborn appeals as of right the Michigan Tax Tribunal's judgment establishing the true cash values, state equalized values, and taxable values of petitioner Kassem Abbas's real property in the City of Dearborn for the 2009 and 2010 tax years. We affirm.

I. FACTS

A. BACKGROUND FACTS

In August 2007, the Michigan Tax Commission issued a bulletin, 2007 Bulletin No. 6, in which the Commission established guidelines for whether assessors could consider sales involving financial institutions in sales-comparison analyses. The Commission indicated that high numbers of sales from financial institutions have affected the housing market and might be open market transactions, and provided steps to analyze whether these sales were arm's-length transactions that could be used in sales-comparison analyses.

Abbas owns a duplex in the City of Dearborn. The City of Dearborn determined that the true cash value of Abbas's property was \$179,900 in 2009 and \$152,900 in 2010. Abbas appealed the City of Dearborn's determinations to the Tax Tribunal, alleging that these valuations were excessive.

B. THE SALES-COMPARISON REPORTS

Both Abbas and the City of Dearborn presented appraisal reports and sales-comparison market analyses as evidence. Anthony Scheriff, Abbas's appraiser, used three comparable properties to calculate the property's value, and submitted a fourth comparable property for additional support. At the February 2011 hearing, Abbas's tax representative testified that

Scheriff attempted to use private sales, but that Scheriff used bank-owned or short sales when there were an insufficient number of private sales in the immediate area. After adjustments, Abbas’s comparable sales were as follows:

2009 Sales	Type	Amount
1	private	\$81,500
2	bank-owned	\$73,600
3	private	\$79,080
4	bank-owned	\$79,640

2010 Sales	Type	Amount
1	short sale	\$51,000
2	short sale	\$73,000
3	short sale	\$63,500
4	bank-owned	\$49,000

From his sales-comparison analysis, Scheriff determined that Abbas’s property’s true cash value was \$80,000 in 2009 and \$65,000 in 2010.

The City of Dearborn’s appraiser, Robert Cockrum, submitted a sales-comparison analysis that included adjusted comparable sales as follows:

2009 Sales	Amount
1	\$154,000
2	\$174,300
3	\$172,000

2010 Sales	Amount
1	\$103,000
2	\$108,500
3	\$118,500

Cockrum testified that the sales he utilized in his approach were private sales. On the basis of his analysis, Cockrum determined that Abbas’s property’s true cash value was \$169,500 in 2009 and \$108,500 in 2010. Abbas’s representative testified that Cockrum’s sales did not represent the market because only one of Cockrum’s comparable sales was listed on any listing system. Cockrum testified that he did not use MLS or any other listing system to locate comparable properties.

The hearing referee found that Abbas’s comparable property sales were marketed in a typical fashion for the area. The referee noted that Abbas’s comparable sales included bank-owned and short sales, but found that the sales were “private sales,” were marketed on the open market for a typical amount of time, and that the short sales were adjusted to “reflect the practice

of lenders to sell at a discount[.]” The referee ultimately concluded that the bank-owned and short sales were “market priced sales that sold at arm’s length given the market exposure, conditions of the subject’s market, and conditions of those sales.”

The referee rejected the City of Dearborn’s contentions that “short sales are always duress sales” and that it could not consider Abbas’s comparable sales as evidence of the value of Abbas’s property. The referee noted that the City of Dearborn did not show that Scheriff’s specific comparables were actually sold under duress. Abbas’s appraisal report also compared property sales in 2008 and 2009 between bank-owned properties and privately owned properties. The referee found that Scheriff’s analysis showed that there was no market price difference between the sales categories in 2008 or 2009.

The referee found that Abbas’s appraisal utilized “the most similar comparables,” and that Abbas’s sales comparison method was the more reliable indication of the property’s true cash value. The referee determined that the true cash value of Abbas’s property was \$80,000 in 2009 and \$65,000 in 2010, and his taxable values were \$40,000 and \$32,500 respectively.

C. THE TAX TRIBUNAL’S FINAL OPINION

The City of Dearborn filed exceptions to the referee’s proposed opinion, arguing that the referee erred as a matter of law when it concluded that the Tax Tribunal could use bank-owned and short sales as evidence of market value, because these sales were always forced sales, and were not arm’s-length transactions. The City of Dearborn also argued that the referee improperly shifted the burden of proof to the City of Dearborn.

On October 26, 2011, the Tax Tribunal issued its final opinion, adopting the hearing referee’s proposed opinion and values. The Tax Tribunal addressed the City of Dearborn’s contention that it could not use bank-owned or short sales as evidence, and concluded that “the State Tax Commission allows the use of bank sales (including short sales) *if* they are properly verified as arms-length transactions.” The Tax Tribunal concluded that the hearing referee properly considered the factors the Commission used for verification, and determined that Abbas’s comparable sales “were properly verified . . . and are appropriate to use in this case.”

II. BANK-OWNED SALES AND TRUE CASH VALUE

A. STANDARD OF REVIEW

This Court’s review of a decision by the Tax Tribunal is very limited.¹ “In the absence of fraud, error of law or the adoption of wrong principles,” a party may not appeal the Tax Tribunal’s decision on a property’s value.² When a party does not dispute the facts or allege

¹ *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012).

² Const 1963, art 6, § 28.

fraud, “our review is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle.”³

The Tax Tribunal’s factual findings “are conclusive if they are supported by ‘competent, material, and substantial evidence on the whole record.’”⁴ Substantial evidence supports the Tax Tribunal’s conclusion if a reasonable person would accept the evidence, and “may be substantially less than a preponderance.”⁵

B. BANK-OWNED SALES AS FORCED SALES

The City of Dearborn argues that the Tax Tribunal committed an error of law when it accepted Abbas’s sales-comparison analysis as evidence of his property’s fair market value, because Abbas’s analysis included bank-owned and short sales, and these types of sales are “forced sales.”

The City of Dearborn argues that this Court’s decision in *Samonek*⁶ indicates that bank-owned sales are forced sales. In *Samonek*, the Tax Tribunal “summarily rejected” the petitioner’s evidence of the value of the petitioner’s property through the sales-comparison approach, including evidence of a bank-owned sale.⁷ This Court held that the Tax Tribunal erred as a matter of law by excluding the petitioner’s evidence without any analysis, and instructed the tribunal “to determine whether the [bank sale] was a ‘forced sale.’”⁸

We conclude that *Samonek* does not support the City of Dearborn’s position that a bank-owned sale or short sale is, by definition, a “forced sale.” Indeed, *Samonek* supports the opposing view—the Tax Tribunal may not summarily reject evidence solely because a bank-owned sale is involved, but instead must determine whether the sale was in fact a forced sale. The remainder of the authorities the City of Dearborn uses as support are unpublished. Unpublished authorities are not binding on this Court, but are merely persuasive.⁹ The City of Dearborn’s unpublished cases are factually distinguishable because they involve (1) a relinquished land contract and (2) a deed in lieu of foreclosure, rather than bank-owned sales that

³ *Id.* at 527-528.

⁴ *Briggs Tax Service, LLC v Detroit Pub Schools*, 485 Mich 69, 75; 780 NW2d 753 (2010), quoting *Mich Bell Tel Co v Dept of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994); 1963 Const, art 6, § 28.

⁵ *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1999); *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004).

⁶ *Samonek v Norvell Twp*, 208 Mich App 80; 527 NW2d 24 (1994).

⁷ *Id.* at 86.

⁸ *Id.*

⁹ MCR 7.215(C)(1).

the bank marketed and listed. We do not consider these cases persuasive. The City of Dearborn provides no further support for its argument. Thus, we reject the City of Dearborn's argument that every bank sale or short sale is, by definition, a forced sale.

C. BANK-OWNED SALES AND FAIR MARKET VALUE

The City of Dearborn also argues that the Tax Tribunal erred when it determined that Abbas's sales-comparison sales were arm's-length transactions that represented fair market values of properties in the area, and that the Tax Tribunal may not use this evidence to determine a property's true cash value.

We conclude that the Tax Tribunal did not err as a matter of law because the procedure it utilized to determine whether to consider Abbas's sales-comparison evidence did not conflict with the Legislature's instruction that the Tax Tribunal determine the property's true cash value. The Michigan Constitution provides that true cash value is necessary to determine a property's proper tax:

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property . . . [and] for the determination of true cash value of such property . . .^[10]

The Legislature has defined "true cash value" as "the usual selling price . . . that could be attained for the property at a private sale, not at auction sale . . . or at forced sale."¹¹ "'True cash value' is synonymous with 'fair market value,'"¹² and is thus "the probable price that a willing buyer and a willing seller would arrive at through arms length negotiation."¹³

The Tax Tribunal has the duty to determine the property's true cash value "utilizing an approach that provides the most accurate valuation under the circumstances."¹⁴ "Regardless of the valuation approach employed, the final value determination must represent the usual price for which the subject property would sell."¹⁵ The sales-comparison approach is a method of arriving

¹⁰ Const 1963, art 9, § 3.

¹¹ MCL 211.27(1).

¹² *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007); *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

¹³ *Huron Ridge LP*, 275 Mich App at 28.

¹⁴ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992); see *Meadowlanes Ltd Dividend Housing Ass'n*, 437 Mich at 485.

¹⁵ *Jones & Laughlin Steel Corp*, 193 Mich App at 353; *Meadowlanes Ltd Dividend Housing Ass'n*, 437 Mich at 485.

at a property's true cash value by comparing the disputed property to recent sales of similar properties in the area, and is an acceptable form of arriving at the property's true cash value.¹⁶

Here, the Tax Tribunal considered Abbas's sales-comparison evidence only after it determined that bank-owned and short sales were a common way that property was sold in the City of Dearborn during 2009 and 2010, and thus these sales were evidence of the property's true cash value. The Tax Commission's internal bulletin provided steps for the Tax Tribunal to analyze and verify sales to "ensure they are arm[']s-length transactions," including: (1) determining whether the type of sale is a measurable portion of the market; (2) determining that the property was properly exposed to the market; (3) determining whether the condition of the property at its assessment reflected the condition of the property at the time of the sale; (4) determining the terms and conditions of the sale; and (5) determining that the parties to the transaction were not related and were acting in their own interests. "[A]gency interpretations are entitled to respectful consideration, but they are not binding on courts and cannot conflict with the plain meaning of the statute."¹⁷

An arm's-length transaction is a transaction between unrelated parties who are not involved in a confidential relationship and who have roughly equal bargaining power.¹⁸ An arm's-length transaction is "characterized by three elements: [(1)] it is voluntary, i.e., without compulsion or duress; [(2)] it generally takes place in an open market; and [(3)] the parties act in their own self-interest."¹⁹ While the Commission's bulletin is not binding, it closely parallels the law concerning arm's-length transactions, which in turn reflects fair market value, which in turn reflects true cash value.

Thus, we conclude that the Tax Tribunal's conclusion that it could utilize Abbas's evidence, which included bank-owned and short sales, to determine his property's true cash value was not a misapplication of the law.

D. THE TAX TRIBUNAL'S FACTUAL FINDINGS

The City of Dearborn also argues that the Tax Tribunal's findings were not supported by the evidence. We disagree. The hearing referee and Tax Tribunal went to considerable lengths to determine whether bank-owned and short sales included in Abbas's sales-comparison analysis were arm's-length transactions that reflected a fair market value. The Tax Tribunal determined that Abbas's comparables were arm's-length sales because they reflected the market in the area, were adequately exposed to the market, the conditions were verified, and Abbas's appraiser

¹⁶ *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485 n 19; 473 NW2d 636 (1991); *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

¹⁷ *In re Rovas Complaint*, 482 Mich 90, 117-118; 754 NW2d 259 (2008).

¹⁸ *Mackey v Dep't of Human Services*, 289 Mich App 688, 699; 808 NW2d 484 (2010).

¹⁹ *Id.*

adjusted the comparisons upward to reflect possible favorable terms and conditions of the sales. The hearing referee verified that the condition of the properties was comparable to Abbas's property, and determined that the sales were private sales. As discussed above, these considerations were designed to ensure that the evidence was of arm's-length transactions that reflected the property's fair market value.

The City of Dearborn argues that Abbas's evidence was flawed because did not take into account whether the bank received additional payments for the short sales. Again, we disagree. The hearing referee found that "[a]n adjustment was applied for the bank-owned sales reflecting the practice of lenders to sell at a discount[.]" The documentary evidence supports that Abbas's appraiser adjusted the values of those properties' price upward to reflect that the bank may be offering the buyer a discount. The record supported the Tax Tribunal's finding of fact that the hearing referee accounted for the short sales' possible discounted financing. Thus, we conclude that the Tax Tribunal's findings were supported by the evidence.

E. WEIGHT OF CONFLICTING EVIDENCE AND BURDEN OF PROOF

The City of Dearborn argues that the Tax Tribunal improperly gave greater weight to Abbas's sales-comparison analysis, which included short sales and bank-owned sales, than to the City of Dearborn's sales-comparison evidence, which did not include bank-owned and short sales. The Tax Tribunal may "accept one theory [of valuation] and reject the other."²⁰ We will not interfere with the Tax Tribunal's determinations of the weight to assign to the evidence.²¹ Because the Tax Tribunal was free to accept Abbas's valuations instead of the City of Dearborn's, and because this Court will not interfere with the weight that the Tax Tribunal assigns to that evidence, we reject this argument.

Finally, the City of Dearborn argues that the Tax Tribunal improperly shifted the burden of proof to the City of Dearborn. The City of Dearborn confuses the burden of persuasion with the burden of going forward with the evidence. The petitioner has the burden to establish a property's true cash value.²² The burden of persuasion always remains on the petitioner, but "the burden of going forward with the evidence . . . may shift to the opposing party."²³ Here, the Tax Tribunal rejected the City of Dearborn's rebuttal evidence involving certificates of occupancy and market escrows. After reviewing the City of Dearborn's documents, the Tax Tribunal determined that "some of the transactions [the City of Dearborn] testified to are not the same transactions [Abbas] has utilized as comparables in the appraisal." It thus rejected the City of

²⁰ *Jones & Laughlin Steel Corp*, 193 Mich App at 356; *Meadowlanes Ltd Dividend Housing Ass'n*, 437 Mich at 485-486.

²¹ *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 404; 576 NW2d 667 (1998).

²² MCL 205.737(3).

²³ *Jones & Laughlin Steel Corp*, 193 Mich App at 355.

Dearborn's evidence. We conclude that the Tax Tribunal did not shift the burden of proof when it determined that the City of Dearborn's rebuttal evidence did not apply because it did not address the same properties.

III. CONCLUSION

We conclude that the Tax Tribunal did not err as a matter of law when it considered Abbas's sales-comparison evidence of his property's fair market value, which included bank-owned and short sales, after it determined that those sales were arm's-length transactions and represented the fair market value of properties in the City of Dearborn. We conclude that the Tax Tribunal did not shift the burden of proof to the City of Dearborn when it rejected its rebuttal evidence.

We affirm.

/s/ William C. Whitbeck
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering